

**COOPERATIVE ENDEAVOR AGREEMENT**

K15-936

**BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**THE SEWERAGE AND WATER BOARD OF NEW ORLEANS**

**THIS COOPERATIVE ENDEAVOR AGREEMENT** (the "**Agreement**") is made and entered into on this 3 day of November, 2015 (the "**Effective Date**"), by and between the **CITY OF NEW ORLEANS**, represented by **MITCHELL J. LANDRIEU, MAYOR** ("**City**"), and the **SEWERAGE AND WATER BOARD OF NEW ORLEANS**, represented by **WM. RAYMOND MANNING, PRESIDENT PRO TEM** ("**SWBNO**") (the City and SWBNO sometimes collectively referred to as the "**Parties**").

**WHEREAS**, the City is a political subdivision organized under the law of the State of Louisiana;

**WHEREAS**, SWBNO is a political corporation organized under the laws of the State of Louisiana;

**WHEREAS**, pursuant to Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes;

**WHEREAS**, the City's Department of Public Works ("**DPW**") provides for the design, construction, paving, maintenance, and marking of streets, bridges, and related structures and approaches;

**WHEREAS**, in particular, DPW supervises, regulates, and controls installations in, above, and under streets, and therefore is in a unique position to provide "Permanent Pavement Restoration" of same in an efficient and cost effective manner;

**WHEREAS**, SWBNO has authority over the construction of, control, maintenance, and operation all underground work necessary or incidental to the sewerage and water systems and over major drainage infrastructure;

**WHEREAS**, SWBNO is responsible for construction of, control, maintenance, and operation of the public water system, public sewerage system, and major drainage system of the City;

1/8

PWS100261

WHEREAS, on July 1, 1992, the Parties entered into an agreement to define their respective roles and responsibilities with regard to the public drainage, sewerage and water systems (the "1992 Agreement"); and

WHEREAS, the Parties now desire to accomplish a valued public purpose of improving the restoration of underground utilities and pavement by enhancing the collaboration between the Parties.

NOW THEREFORE, the City and SWBNO, each having the authority to do so, agree as follows:

#### **ARTICLE I - DEFINITIONS**

A. "Underground SWBNO Utilities" mean all pipes, connections, valves, manholes, electrical conduits, and related infrastructure buried below the surface of the public right of way which are under the authority and control of the SWBNO.

B. "Repair" or "Repairs" mean the saw cutting and subsequent demolition of pavement, excavation to access the damaged underground utilities, replacement, rehabilitation, and/or reconstruction of the underground utilities, the removal of any unsuitable and/or excess materials, placement of approved, compacted material in appropriate lifts to backfill any trench or other excavation required as part of the repair.

C. "Temporary Pavement Restoration" means the placement of DPW-approved compacted fill covering up to the surface of the roadway and the installation of traffic control measures subsequent to the permanent pavement restoration.

D. "Permanent Pavement Restoration" means the removal of temporary pavement restoration by SWBNO as part of their repair, any additional saw cutting of pavement and subsequent removal of construction debris and/or materials, preparation of the base course and adjacent, in situ pavement in accordance with applicable DPW's general specifications, the placement of permanent pavement, final inspection, and removal of any remaining traffic control measures.

#### **ARTICLE II - OBLIGATIONS OF THE PARTIES**

##### **A. SWBNO:**

1. Agrees to maintain and repair Underground SWBNO Utilities, as referenced above.
2. Shall notify DPW within seventy-two (72) hours, when the repair to the Underground SWBNO Utilities is completed on the weekend or Holiday, or within twenty-four (24) hours when the repair to the Underground SWBNO Utilities is completed on a weekday, thus informing DPW of the need for the "Permanent Pavement Restoration".
  - a. At a minimum, this notification will include the location of the repairs, the type of repairs, the approximate size of the cuts, and generally the type of Permanent Pavement Restoration that may be required.
3. Agrees to complete Repairs to Underground SWBNO Utilities in accordance with the latest edition of all applicable engineering standards.
4. Agrees to complete repairs to both Underground SWBNO Utilities and underground utility lines maintained by DPW in instances where the SWBNO, while performing

repairs to Underground SWBNO Utilities in the public right of way, notices the need for repairs to utility lines maintained by DPW.

5. Will be responsible for maintenance of utility service cut site to include traffic control measures for a period of thirty (30) calendar days after notification of the completed repairs as set forth in Article II A(2) above.
6. Shall ensure that the backfill placed as part of the Repair meets all applicable compaction, gradation, and moisture content requirements as contained in the latest edition of the DPW General Specifications for Street Paving.
7. Shall provide results from tests conducted by a certified materials testing laboratory, upon request, to DPW to confirm the backfill in place meets all applicable requirements prior to Permanent Pavement Restoration. If such backfill does not meet all applicable requirements, the repair will be considered incomplete and will be redone by SWBNO.
8. Agrees to submit an invoice to the DPW on a routine basis as agreed to in advance by the Parties for all costs associated with the work performed on DPW's behalf.
  - a. Each invoice submitted shall include, at a minimum, the locations of all the repairs to the underground utility lines maintained by DPW which were performed by SWBNO on DPW's behalf for which reimbursement is sought, itemizing with specificity the costs associated with each repair.
9. May suspend work performed on DPW's behalf if payment is not received within sixty (60) days or funding is not readily available to cover the anticipated cost of work.
10. Agrees to reimburse DPW for the costs associated with Permanent Pavement Restoration performed on SWBNO's behalf within thirty (30) days after the receipt of an invoice from DPW.
  - a. These costs may include but not limited to geotechnical testing, field inspection, program management, and construction services at rates agreed to in advance by the Parties.
  - b. SWBNO agrees to maintain a minimum balance in the City's account to cover at least thirty (30) days of anticipated program costs in an amount as agreed to in advance by the Parties.

**B. DPW:**

1. May conduct material testing of the backfill placed in lieu of or in addition to any material testing conducted by SWBNO.
2. May inspect the Repairs as they are completed by SWBNO and the site once Repairs are completed.
3. Will be responsible for maintenance of utility service cut site to include traffic control measures beginning thirty (30) calendar days after notification of the completed repairs as set forth in Article II A(2) above.
4. Agrees to use good faith efforts to complete Permanent Pavement Restoration within

thirty (30) days of notification that the Underground SWBNO Utilities repairs are completed.

5. Shall notify SWBNO within seventy-two (72) hours after Permanent Pavement Restoration is completed.
6. In cases where an additional leak and/or damage to Underground SWBNO Utilities is detected prior to or during Permanent Pavement Restoration, shall stop work and notify SWBNO within twenty-four (24) hours so that additional Repairs can be completed.
7. Shall be responsible for maintenance of the Permanent Pavement Restoration, except when a repair is required.
8. Agrees to submit an invoice to the SWBNO on a routine basis as agreed to in advance by the Parties for all costs associated with the work performed on SWBNO's behalf.
  - a. Each invoice submitted shall include, at a minimum, the locations of all Permanent Pavement Restoration performed by DPW for which reimbursement is sought, itemizing with specificity the costs associated with each restoration.
9. Agrees to establish an account and receive adequate spending authority from the City Council to receive reimbursement payments from SWBNO and pay for program expenses incurred by DPW.
10. May suspend work performed on SWBNO's behalf if payment is not received in sixty (60) days or funding is not readily available to cover the anticipated cost of work.
11. Agrees to reimburse SWBNO for the costs associated with the repairs to the underground utility lines maintained by DPW which were performed by SWBNO on DPW's behalf within thirty (30) days after the receipt of an invoice from SWBNO.
  - a. These costs may include but not limited to geotechnical testing, field inspection, program management, and construction services at rates agreed to in advance by the Parties.

### **ARTICLE III – IMPLEMENTATION**

The Parties will develop and agree to an implementation plan within thirty (30) days after this Agreement is executed. This implementation plan will include a timeline for full, City-wide implementation of the Agreement, an invoicing procedure, minimum account balance, staffing plan, initial account deposit, and acquisition plan for all required contractual services.

### **ARTICLE IV - DURATION**

This Agreement will be effective for one (1) year from the Effective Date.

### **ARTICLE V – TERMINATION FOR CONVENIENCE**

Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party written notice of its intention to terminate at least thirty (30) days before the intended date of termination.

## **ARTICLE VI - INDEMNITY**

To the fullest extent permitted by law, the Parties agree to protect, defend, indemnify and hold harmless one another, their agents, elected officials and employees from and against all claims, actions, liabilities, losses (including, without limitation, economic losses) and costs, arising out of or related to (a) any actual or alleged act or omission in the performance of the obligations by one another or any contractor or (b) any act outside the scope of the obligations by either party or any contractor under this Agreement.

## **ARTICLE VII – INSURANCE**

The City and SWBNO shall have the option to maintain self-insurance or to procure at its own expense and maintain insurance policies in effect at all times during the term of this Agreement.

## **ARTICLE VIII - NON-DISCRIMINATION**

**A. Non-Discrimination in Employment.** With regard to any hiring or employment decision made in connection with the performance of this Agreement, including without limitation employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other compensation, and selection for training including apprenticeship, SWBNO:

1. Will not discriminate or retaliate, in fact or in perception, against any employee or person seeking employment on the basis of race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status;
2. Will take affirmative action to ensure compliance with this section;
3. Will include statements in all solicitations or advertisements for employment that all qualified applicants will receive consideration for employment without regard to race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status;
4. Will post notices containing the provisions of this section in conspicuous places available to employees and persons seeking employment.

**B. Non-Discrimination.** In the performance of this Agreement, SWBNO:

1. Will not discriminate or retaliate, in fact or in perception, on the basis of race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status against: any employee of the City; any employee of any person working on behalf of the City; or any person seeking accommodation, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by SWBNO.
2. Will comply with and abide all federal, state, and local laws relating to non-discrimination, including without limitation Title VII of the Civil Rights Act of 1964, as amended, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. **Subcontracts.** SWBNO will incorporate the provisions of this Article by reference into all subcontracts relating to the performance of this Agreement.

#### **ARTICLE IX - NOTICES**

A. **In General.** Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Director  
City of New Orleans  
Department of Public Works  
1300 Perdido Street, Suite 6W03  
New Orleans, LA 70112

&

City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112

2. To SWBNO:

Executive Director  
Sewerage & Water Board of New Orleans  
625 St. Joseph St.  
New Orleans, La 70165

B. **Effectiveness.** Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. **Changes.** Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

#### **ARTICLE X - MISCELLANEOUS PROVISIONS**

A. **Ownership of Documents.** All data collected and all products of work prepared, created, or modified by the City in the performance this Agreement, including, without limitation, any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings, or other such material, regardless of form and whether finished or unfinished, (collectively, "**Work Product**") are the exclusive property of the City, and no reproduction of any portions of such Work Product may be made in any form without the express written consent of the City. The City shall have all right, title, and interest in all Work Product, including without limitation the right to secure and maintain the copyright, trademark, and/or patent of Work Product in the name of the City. The City may use or distribute all Work Product for any purpose without the consent of and for no additional consideration owing to SWBNO.

**B. Jurisdiction.** SWBNO consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas of jurisdiction on account of the residence elsewhere.

**C. Governing Law.** Any dispute arising from or relating to this Agreement or the performance of any obligations under this Agreement shall be resolved in accordance with the laws of the State of Louisiana.

**D. Rules of Construction.** This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. The singular number includes the plural, where appropriate. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in favor of or against either party on the basis of which party drafted the language.

**E. Severability.** The Parties intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, if a court of competent jurisdiction finds any provision to be unenforceable as written, the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If a court finds any provision is not subject to reformation, that provision shall be fully severable and the remaining provisions of this Agreement shall remain in full force and effect and shall be construed and enforced as if such illegal, invalid, or unenforceable provision was never included, and the remaining provisions of this Agreement shall remain in full force and effect.

**F. Survival of Provisions.** All representations and warranties and all responsibilities regarding record retention, access, and ownership, cooperation with Office of Inspector General investigations, and indemnification shall survive the termination of this Agreement and continue in full force and effect.

**G. No Third-Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the City and SWBNO, and the parties expressly disclaim any intent to benefit any person that is not a party to this Agreement.

**H. Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right, or to seek any remedy upon discovery of any default or breach of the other party shall not affect or be deemed a waiver of any party's right to insist upon compliance with the terms and conditions of the Agreement, to exercise any rights, or to seek any available remedy with respect to any default, breach, or defective performance.

**I. Agreement Binding.** This Agreement is not assignable by either party unless authorized by a validly executed amendment.

**J. Modifications.** This Agreement shall not be modified except by written amendment executed by authorized representatives of the parties.

**K. Voluntary Execution.** SWBNO has read and fully understands the terms, covenants and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

**L. Complete Agreement.** This Agreement supersedes and replaces any and all prior agreements, negotiations, and discussions between the parties with regard to the terms, obligations, and conditions of this Agreement.

**IN WITNESS WHEREOF**, the City and SWBNO, through their duly authorized representatives, execute this Agreement.

**CITY OF NEW ORLEANS**

BY: \_\_\_\_\_

**MITCHELL J. LANDRIEU, MAYOR**

11/3/15

**FORM AND LEGALITY APPROVED.**

**FORM AND LEGALITY APPROVED:**

Law Department

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Nelson P. Gombert

**SEWERAGE AND WATER BOARD OF NEW ORLEANS**

BY: \_\_\_\_\_

**WM. RAYMOND MANNING, PRESIDENT PRO TEM**



**COOPERATIVE ENDEAVOR AGREEMENT WITH CITY OF NEW ORLEANS  
FOR THE PERMANENT PAVEMENT RESTORATION OF UTILITY CUTS**

**WHEREAS**, the Sewerage and Water Board and the City of New Orleans desire to enter into a Cooperative Endeavor Agreement (CEA), consistent with the Home Rule Charter of the City of New Orleans, to allow the City of New Orleans to perform permanent paving restoration of utility cuts to be made by the Sewerage and Water Board of New Orleans. The intent of the CEA is to accomplish a valued public purpose of improving the restoration of underground utilities and pavement by enhancing the collaboration between the parties; and

**WHEREAS**, the CEA will require that the City coordinate with the Board the removal of the backfill, temporary pavement, and/or temporary covering placed by the Board as part of its repair, and any additional saw cutting of pavement and subsequent removal of construction debris and/or materials, preparation of the base course and adjacent pavement in accordance with applicable Department of Public Works' general specifications, the placement of permanent pavement, final inspection, and removal of any remaining traffic control measures.

**NOW THEREFORE, BE IT RESOLVED**, that the President Pro Tem, on behalf of the Sewerage and Water Board of New Orleans is hereby authorized to enter into a Cooperative Endeavor Agreement with the City of New Orleans for the permanent pavement restoration of utility cuts.

---

I, Cedric S. Grant, Executive Director,  
Sewerage and Water Board of New Orleans, do hereby  
certify that the above and foregoing is a true and  
correct copy of a Resolution adopted at the Regular  
Monthly Meeting of said Board, duly called and held,  
according to law, on October 21, 2015.



---

**CEDRIC S. GRANT, EXECUTIVE DIRECTOR  
SEWERAGE AND WATER BOARD OF NEW ORLEANS**